

Talking Points on the PPP/FAR credits clause issue

Overview – key points

- Engineering firms applied heavily for PPP loans in 2020 given the tremendous uncertainty in the economy with the pandemic, and the program was successful in its core goal of helping firms to save jobs.
- Unfortunately, in what may be an unintended conflict between this critical assistance and the Federal Acquisition Regulations (FAR), engineering firms that qualified for PPP loans and qualify for loan forgiveness, and also work on State DOT and transit projects, are now faced with the risk of losing part or all of their loans.
- This will hurt the very firms that needed the PPP assistance the most – small minority and women-owned firms that provide critical services to State DOT and transit agencies.
- This problem appears to be unique to engineering firms working on transportation projects – construction contractors and other businesses working on the same projects are unaffected – and is the result of how the regulation in question (the FAR credits clause) impacts certain types of contracts.
- ACEC has made some progress working with FHWA to fix the problem but there are limits on what the agency can do, requiring intervention from Congress.
- The House Small Business Committee held a [hearing](#) on this issue in March that provided helpful attention to the issue, and we're working with the House Transportation & Infrastructure Committee and the Senate Environment & Public Works Committee to find a targeted solution.
- We believe the best solution is to treat engineering firms the same way all other businesses are treated with regard to their PPP loans through legislation that provides a very targeted waiver of the FAR credits clause as it applies to PPP loans for engineering firms.
- We need Congress' help to do this and protect the firms in your district and state and the jobs that were saved as a result of the PPP loan program.

How will FHWA implement this rule if Congress doesn't intervene?

- FHWA is requiring firms to reduce the overhead rates they charge to DOT clients to “credit” back the value of the PPP loan -- essentially forcing firms to work for their DOT and transit clients at a loss.

- Once this discounted overhead is established, it will likely be applied to all DOT and transit work in 2021 (and potentially beyond for multi-year contracts).
- There are no guardrails around this approach -- firms face the serious risk of losing their entire loan, even if only a portion of the loan was applied to employee salaries and other expenses that may have been involved in DOT contracts, and could lose far more than the value of the loan if the discounted overhead rate is applied broadly to multiple DOT and transit client agencies.

Why allowing firms to keep forgiven PPP Loans isn't "double-dipping"

- The FAR credits clause shouldn't apply to the PPP program, which was created during a national emergency for the specific purpose of saving jobs, not to provide discounts to government agencies.
- Congress made it clear in the CARES Act that it did not intend for PPP loans to be considered income and reinforced this point in the December stimulus package when it overruled then Treasury Secretary Mnuchin's determination that expenses covered by PPP loans would not be deductible -- we believe the same principles apply with forgiven PPP loans and the FAR credits clause.
- Finally, if there is a concern over double-dipping, then apply the same standard to all businesses that took loans and qualify for forgiveness, not just engineering firms.
- Because the regulations aren't universally applied it appears that engineering firms will be forced to give back their PPP assistance, but not construction contractors, materials and equipment suppliers, and other businesses working on the same federal aid project.